

January 20, 1999



OFFICE OF THE
ATTORNEY GENERAL
STATE OF TEXAS

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JOHN CORNYN
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Mr. Ryan Tredway
Staff Attorney
Legal Compliance, MC110-1A
Texas Department of Insurance
P.O. box 149104
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OR99-0136

Dear Mr. Tredway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121458.

The Texas Department of Insurance (the department) received a request for all information involving the department's interpretation of article 5.07-1 of the Insurance Code. You indicate that you will release some of the requested information. You claim, however, that other portions of the responsive information are protected from disclosure by sections 552.107 and 552.111 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

You first claim that section 552.111 protects certain portions of the documents and a set of draft documents from disclosure. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111

¹In your initial letter to this office you also raised sections 552.101 and 552.106 of the Government Code as exceptions to disclosure. You have subsequently withdrawn your request for a decision based upon these exceptions.

exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Section 552.111, however, does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision No. 615 at 4-5 (1993). In the first set of documents you have submitted, it appears that you have marked in brackets the information you seek to withhold under this exception. We find that you may withhold the bracketed information in the first set of documents under section 552.111. There is also some information you may withhold in the third set of documents under section 552.111. We have marked this information.

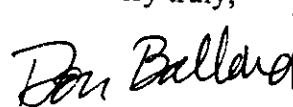
You additionally argue that the second set of submitted information may be withheld as draft documents. In Open Records Decision 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in a final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. Consistent with Open Records Decision No. 615 (1993), section 552.111 excepts draft documents only to the extent that the draft documents pertain to the policymaking function of the governmental body. After reviewing the drafts that you submitted, we conclude that you may withhold the drafts under section 552.111 if the documents were intended for public release in a final form.

Lastly, you contend that the information submitted in the third set of documents may be withheld under the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We find that some of the submitted information reveals the client's confidential communications or an attorney's legal advice or opinions and, therefore, may be withheld under section 552.107. We have marked the information in the submitted documents that may be withheld. The remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at

issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Don Ballard". The signature is written in a cursive, slightly slanted style.

Don Ballard
Assistant Attorney General
Open Records Division

JDB/nc

Ref: ID# 121458

Enclosures: Submitted documents

cc: Mr. Jack M. Cleaveland, Jr.
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(w/o enclosures)